CITIBANK, N.A.

v.

KWOK CHEE LOONG

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[ORIGINATING MOTION NO. F82 OF 1985]
22 FEBRUARY 1988

LAND LAW: *Removal of Private Caveat - Whether respondent being director or shareholder entitled to lodge private caveat - Whether applicant is an aggrieved party.*

The applicant provided a term loan and loan facilities to the maximum of S$7.3 million to Garu Timber Sdn. Bhd. The loan agreement was executed on 29 March 1983 and as security Tajob Realty Sdn. Bhd. ("Tajob") charged its lands to the applicant which was registered on 30 March 1984.

On 7 September 1984 the respondent, the only other director and a shareholder of Tajob lodged a private caveat on the ground that the charge was created without his approval and without a resolution from Tajob.

The only issue was whether the respondent has any registrable interest over the land under s. 323 of the National Land Code.

Held:

[1] The respondent as a shareholder is only entitled to receive dividends and to vote at meetings convened by Tajob and as such does not have a registrable interest under s. 323 of the National Land Code.

[2] As regards the respondent's position as a director of Tajob it was clear from the evidence that the respondent was present at the board meeting when the resolution approving the charge was passed and that he had consented to the creation of the charge. There was thus no merit in the respondent's allegation that he had no knowledge of the creation of the charge.

[3] The applicant being a chargee is an aggrieved party under the National Land Code and as such was entitled to file the application to remove the caveat.

[Applicant's motion allowed with costs.]

Legislation referred to:
National Land Code 1965, ss. 323, 327

JUDGMENT

Siti Norma Yaakob J:

In this originating motion, the applicant seeks to remove a private caveat lodged by the respondent and the facts leading to the lodgment of the caveat happened in the following manner. The applicant, a Bank incorporated in the United States with branches throughout the world provided a term loan and loan facilities to the maximum of S$7.3 million to Garu Timber Sdn. Bhd. (the borrower), a company incorporated in Malaysia with its registered office in Petaling Jaya. The loan agreement was executed on 29 March, 1983 and as security for these loans, another company called Tajob Realty Sdn. Bhd. (Tajob), charged its land in Kuala Lumpur in favour of the applicant.

The charge was registered on 30 March 1984, but 5 months later, on 7 September 1984, the respondent, the only other director and a shareholder of Tajob lodged a caveat on the ground that the charge was created without his approval and without a resolution from Tajob.

Thus the only issue is whether the respondent, being only a director and shareholder, has any registrable interest over the land under s. 323 of the National Land Code. I answer this in the negative; for as a shareholder, he is only entitled to receive dividends and to vote at meetings convened by Tajob. As an ordinary director however, he is entitled to attend all board meetings, participate in the discussions that follow and decide on policies and business ventures that Tajob should embark. One of these would be the authority to charge Tajob's land as security for the loan facilities granted by the applicant to the borrower. In his statutory declaration attached to Form 19B, the respondent has verified that the only other director of Tajob, together with Tajob's secretary, had created the charge without his knowledge and that there was no Board resolution passed authorising the creation of the charge in the first place.

Lee Che Hing, the other director of Tajob, who is also its chairman and managing director, has deposed that he had chaired a board meeting on 7 March 1984 wherein the respondent was present and the only topic discussed at that board meeting was the creation of a third party charge of Tajob's land in favour of the applicant. With the respondent's approval, a resolution was passed that such a charge be created and the Minutes of the Board meeting which is exhibited in the applicant's affidavit has clearly recorded the presence of the respondent and the resolution that was passed. The secretary of Tajob has also confirmed the fact of this board meeting, the presence of the respondent and the resolution that was passed.

In the presence of such documentary proof, I had concluded that there was no merit to the respondent's allegation that he was not aware of the creation of the charge in the first place.

In the further affidavits and in the course of his Counsel's submission, the respondent had also questioned that the applicant is not an aggrieved party under s. 327 of the National Land Code, as the loan agreement, the charge documents and the Power of Attorney exhibited by the applicant, all show that it is known by 4 different names.

Again I did not consider there was any merit to this submission as the application before me was to remove a caveat lodged by the respondent and made under s. 327 of the National Land Code and being the chargee, the applicant is an aggrieved party, as it cannot enforce its rights to proceed to foreclose the charge by the presence of the caveat.

As for the applicant being known by four different names, this same objection was raised by Tajob in two subsequent suits filed against the applicant, CSF. 22-282-86 and CSF. 22-416-86 wherein I have already made a ruling on such an objection and for which appeals are pending before the Supreme Court.

As far as this originating motion is concerned, I consider that such an objection is immaterial as the respondent by his own admission in his statutory declaration relies on the fact that he was not aware that Tajob's land had been charged and that there was no Board resolution passed for the creation of such a charge. Since there are documentary evidence to show otherwise, I had accordingly allowed the applicant's motion with costs and ordered that the Land Administrator, Kuala Lumpur cancel the respondent's caveat forthwith.

Also found at [1988] 2 CLJ 758